THE HON'BLE MS JUSTICE G.ROHINI

–

WRIT PETITION No.5127 of 2006

–

DATED: 24.04.2006

Between:

–

M.Prasad Reddy S/o Yenku Reddy,

R/o Devispeta, Indukurpet Mandal,

Nellore District.

… **PETITIONER**

And:

–

The South Central Railway, rep., by its General Manager,

Railnilayam, Secunderabad and others.

… **RESPONDENTS**

THE HON'BLE MS JUSTICE G.ROHINI

–

WRIT PETITION No.5127 of 2006

ORDER:

In response to the Tender Notification dated 18.01.2006, issued by the second respondent-Divisional Manager (works), South Central Railway, Guntakal, inviting tenders for 12 works, the petitioner has submitted his bid in respect of item No.5 i.e.,

the work relating to “Gudur – Renigunta Section – Construction of side drains in cutting including raising of the side drain walls in cutting side at isolated locations from km.4/5 to km.24/11 between Gudur – Nidigallu Stations (Up & Dn lines)”.

It is not in dispute that six persons submitted tenders in respect of work under item No.5, including the petitioner. In the counter-affidavit filed on behalf of the fourth respondent, it has been admitted that in terms of the rates quoted, the offer of the petitioner was the lowest.

The petitioner contends that being the lowest bidder he is entitled for grant of the work in question. Hence this Writ petition, seeking a Writ of Mandamus declaring the alleged action of the respondents in not awarding the contract to him in respect of item No.5, in spite of the fact that he was the successful bidder in respect of the said item is arbitrary and illegal.

It is relevant to note that the cost of the tender form was originally specified as Rs.1,680/- in the tender notification. However, subsequently, the cost of the tender form was enhanced to Rs.2,240/-. The petitioner alleged that there was no proper publicity as to the enhanced cost of the tender form and therefore, he had paid only Rs.1,680/- and on that ground the respondents had rejected his tender in spite of the fact that it was the lowest.

The fourth respondent, in his counter-affidavit, stated that the cost of the tender form was originally specified as Rs.1,680/-, however, it was enhanced to Rs.2,240/- and the same was published by way of corrigendum in local dailies. It is also contended that the mere fact that the petitioner was the lowest bidder, in terms of the rate quoted by him, does not confer any right on him for grant of the contract.

On the other hand, the contention of Sri N.Subba Reddy, the learned Senior Counsel appearing for the petitioner, is that even assuming that the petitioner has not paid the correct value of the tender form, the same being only a technical irregularity, the respondents ought to have waived the same, and there is absolutely no justifiable reason to reject the tender submitted by the petitioner on that ground. In support of his submission, the learned senior counsel has relied upon a decision of

the Supreme Court in ***M/S Poddar Steel Corporation v M/S Ganesh Engineering Works*** , in which, it was held as under:

> "As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories – those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases."

Sri A.Krishnam Raju, the learned Standing Counsel appearing for the respondents, though does not dispute the said proposition of law, submits that the tenders have not yet been finalized and therefore, the contention of the petitioner that the work has been awarded in favour of the fifth respondent, ignoring the lowest rate quoted by the petitioner is incorrect.

As a matter of fact in the counter-affidavit filed on behalf of the fourth respondent it was stated that the petitioner's allegation that the contract was not awarded to him for the reason that he had not paid the enhanced cost of the tender form was not true and that the tenders have not yet been finalized.

In view of the specific plea raised by the respondents that the tenders have not yet been finalized, it is not necessary for this Court to express any opinion as to the entitlement of the petitioner.

Accordingly, without expressing any opinion on merits, I deem it appropriate to dispose of the writ petition leaving it open to the respondents to finalise the tenders, particularly item No.5 of the tender notification, dated 18.01.2006, in terms of the settled principles of law.

The writ petition is accordingly disposed of. No order as to costs.

24.04.2006

Note: Furnish C.C., in three days.

(B/o)

sh

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.5127 of 2006

DATED: 24.04.2006